

TOWN OF WEBSTER MASSACHUSETTS

WETLANDS PROTECTION BYLAW

ARTICLE XX of the TOWN OF WEBSTER BYLAWS.

1. Purpose

The purpose of this Bylaw is to preserve, protect, and where possible, restore the public interests ("Public Interests") associated with wetlands, related water resources and adjoining land areas in the Town, and to set forth a public review and decision making process for activities having an impact or effect upon any areas subject to protection ("Area Subject to Protection"). This Bylaw is a mandate unto itself and as an adjunct to the Massachusetts Wetlands Protection Act at MGL. c. 131, §40, and its Regulations at 310 CMR 10.00, as amended from time to time. This shall be done by controlling activities deemed by the Conservation Commission ("Commission") to have an impact or cumulative impact upon the resource areas ("Resource Areas") and stated public interests ("Public Interests") in MGL. c.131, §40 and 310 CMR 10.00 and this Bylaw. This Bylaw is intended to utilize the Home Rule authority of this municipality to protect additional Resource Areas and Public Interests, with additional standards and procedures stricter than those found in MGL c. 131, §40 and 310 CMR 10.00. The Public Interests include the following:

- public and private water supply
- groundwater
- flood control
- erosion and sedimentation control
- storm damage prevention
- water quality
- prevention and control of pollution
- fisheries
- wildlife habitat
- rare species habitat
- rare plant and animal species
- agriculture
- aesthetics

deemed important to the community (collectively, the "Public Interests protected by this Bylaw").

This Bylaw is subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant Bylaws of the Town of Webster.

2. Jurisdiction

Except as permitted by the Commission or as provided in this Bylaw or its Regulations hereunder, no person shall commence activities to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas:

- 2.1 any freshwater wetland, marsh, wet meadow, bog, swamp, flat, bank, beach, reservoir, lake, pond, intermittent stream, vernal pool, river, brook, or creek; and adjoining lands out to a distance of 100 feet known as the Adjacent Upland Resource Area (AURA);
- 2.2 any perennial river, stream, river, brook, or creek; the land thereunder; and adjoining lands out to a distance of 200 feet, known as the Riverfront Area;
- 2.3 Great Ponds of the Commonwealth and adjoining lands out to a distance of 200 feet, known as the Adjacent Upland Resource Area (AURA);
- 2.4 any land under the aforementioned waterways and waterbodies in Sections 2.1 or 2.2 above;
- 2.5 any Land Subject to Flooding

(collectively the “resource areas protected by this Bylaw”).

3. Exemptions

The following exemptions shall apply and no application or permit is required for, provided that the work complies with any and all other municipal bylaws and ordinances. Viability of exemption shall be determined by the Commission or, as delegated, to the Agent of the Commission:

- A. In-kind maintenance or repairs to Pre-Existing or duly Permitted structures, Appurtenances, or Maintained areas.
- B. Normal maintenance or improvement of land in agricultural use defined under 310 CMR 10.04
- C. Emergency projects necessary for the protection of health and safety of the public, provided the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 30 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this Bylaw. Failure to meet these and other requirements, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

4. Definitions

Except as otherwise provided in this Bylaw or the Regulations hereunder, the definitions of terms and the procedures in this Bylaw shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00), as now in effect. In addition, the following definitions shall apply in the interpretation and implementation of this Bylaw.

Abutter- shall include all landowners and individual condominium owners.

Activity- means any form of draining, dumping, dredging, damming, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverging of ground or surface water; the installation of drainage; sewage and water systems; the discharging of pollutants, including sediment; the destruction of plant life; and any other changing of the physical, biological, or chemical characteristics of land or water;

Adjacent Upland Resource Area- The land within 100' of a Resource Area as defined in MGL c.131, §40, 310 CMR 10.00, §X of this Bylaw, or 200' from the bank of a Great Pond or Perennial River/Stream as defined in this Bylaw. The AURA extends perpendicularly from the outermost edge of stated Resource Areas below, without regard for topography.

A 100' AURA shall apply to:

- Banks of Intermittent Streams;
- Wetlands, regardless of whether they border a waterbody or watercourse;
- Vernal pools, including areas beyond the boundaries of other resource areas;

A 200' AURA shall apply to:

- Banks/Bankfull Condition/Mean Annual High Water mark of Perennial Rivers/Streams;
- The Mill Brook Raceway
- Great Ponds (see exemption Section 11.2)

AURA shall not apply to the following:

- Land Under Waterbodies & Waterways (LUW)
- Bordering Land Subject to Flooding (BLSF)
- Waterbodies less than 1/4 acre-foot in size;
- Isolated Land Subject to Flooding (ILSF), unless it is also a Vernal pool.

Aesthetics- Outward appearance: the way something looks, especially when considered in terms of how pleasing it is;

Adjunct- added as an accompanying object or circumstance; in this case, this Bylaw is an adjunct to MGL c.131, §40 and 310 CMR 10.00;

Adult Fish Population- this definition shall be consistent with the policies and procedures of the Massachusetts Division of Fisheries & Wildlife ("DFW") Natural Heritage and Endangered Species Program ("NHESP"), as amended from time to time;

Adverse- a) In general: having an opposing or contrary interest; in this case, opposing or contrary to the Public Interests;
b) In the context of Impact: in the opinion of the Conservation Commission, an Activity or Alteration to a Resource Area which, by its area, scope, or duration appears to represent more than a minimal change (i.e. Significant) to the characteristics, Functions or Values to the stated Public Interests;

Alter/Alteration- Means to change the condition of any Area Subject to Protection under MGL c.131 §40, or any Area Subject to Protection under the Bylaw. Examples of alterations include, but are not limited to the following:

- (a) the changing of pre-existing drainage characteristics, flushing characteristics, sediment patterns, flow patterns, and flood retention capabilities;
- (b) the lowering of the water level or water table;
- (c) the destruction of vegetation;
- (d) the changing of water temperature, biological oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water

Application- The forms, documents, and plans submitted to the Commission in order to request the approval of a Permit or Order. Unless and until the Commission creates forms specific to the Bylaw, applicants may use Wetlands Protection Act forms created by the Massachusetts Department of Environmental Protection ("DEP").

Appurtenance- Any structural or adjunct or incidental construct to a single family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, porch, patio, swimming pool, tennis/basketball courts, driveway, or sidewalk. Exclusions include, without limitations, lawns, landscaped areas, orchards, gardens, fields, pastures, paddocks, and in-ground sprinkler systems.

Aquatic Life Habitat- The ecological or environmental area particular to aquatic ecosystems and necessary for the function and well-being of aquatic life forms.

Area Subject to Storm Flowage (ASSF)- This shall include Drainage Ditch/Swales and channels that lead into, out of, pass through or connect other Wetlands or Waterbodies less than 1/4 acre-foot in size, and that carry flows resulting from storm events, but may remain relatively dry at other times and do/does not convey groundwater.

Avoid/Avoidance- To keep Work completely outside of Jurisdictional Areas.

Bankfull Condition- Synonymous with Mean Annual High Water (MAHW) and shall be commensurate with the term as used in 310 CMR 10.58(2).

Bordering Vegetated Protection Zone- An area fully adjacent and parallel to a resource area, excluding land subject to flooding, where vegetation is allowed to grow in naturally with indigenous species with little to no human intervention, and which supports the protection of the Public Interests, especially Protection of Surface and Groundwater Supply, Water Quality, Flood Control, Storm Damage Prevention, Prevention and Control of Pollution, Wildlife Habitat, Fisheries, and Aesthetics.

Coldwater Fishery- see definition at 310 CMR 10.04. Additionally, Browns Brook, Freemans Brook, Mill Brook, Mine Brook, and Sucker Brook shall be considered Coldwater Fisheries under this Bylaw.

Commute- To replace with something else.

Compliance- to fulfill the official requirements as put forth by the Conservation Commission in an Order or Determination.

Consultant- Synonymous with Qualified Professional, normally related to third party peer review under MGL c.44, §53G.

Control/Controlling- To regulate or govern by law; in this case, for the Conservation Commission to carry out MGL c.131, §40, 310 CMR 10.00, and the Webster Wetland Protection Bylaw.

Critical Area- See definition at 310 CMR 10.04. For the purposes of this Bylaw, Critical Areas shall include Outstanding Resource Waters, Areas of Critical Environmental Concern, Zone II Wellhead Protection Areas, Interim Wellhead Protection Areas, areas of Estimated and Priority Habitat of Rare and Endangered Species, the Webster Lake Protection District, and Coldwater Fisheries (designated and otherwise).

Cumulative- Gradually building up: becoming successively larger; in this case normally related to Impact.

Day of Discovery- The day which a violation of this Bylaw is found to be present.

Discharge- Without limitation, any overland water or groundwater that empties into a Resource Area or its Adjacent Upland Resource Area.

Distance- All distances noted in this Bylaw (excluding depth), such as the distance between the outermost boundary of a Resource Area and outermost boundary of its associated Adjacent Upland Resource Area, are planar distances measured along a single elevation and without regard for topography.

Drainage Ditch/Swale: A man -made, channelized conveyance system normally created to convey surface or groundwater away from a developed area, such as a road, driveway, parking lot, roof, agricultural field or the like. If a Stream/Intermittent stream flows into a Drainage Ditch/Swale, that portion of the channel below the confluence shall be considered a Stream/Intermittent Stream.

Emergency- Sudden and unexpected event or condition, normally associated with public health and safety, that must be dealt with so urgently that the normal permitting process as described in this Bylaw must be bypassed.

Effective Date- July 1, 2020.

Existing- The condition in place as of the Effective Date of this Bylaw or the date of an Application.

Functions- The intrinsic, nature-governed actions of a Resource Area or its Habitat that contribute to its Value to the Public as a whole.

Great Pond- Waterbodies which contain or contained more than ten acres in their natural state, as listed by DEP, and which are subject to the jurisdiction of MGL c. 91. In this case, Webster Lake.

Habitat- An ecological or environmental area that is inhabited by a particular species of animal, plant, or other type of organism. It is the natural environment in which an organism lives, or the physical environment that surrounds a species population. In this case, normally associated with Aquatic Life Habitat and Wildlife Habitat.

Illegal- As it pertains to this Bylaw, any Activity or Alteration not duly permitted by the Conservation Commission, or exempted under §X of this Bylaw.

Impact- To have an effect on a Resource Area by Work, Activity, or Alteration.

Impracticable- A fact or circumstance that excuses a party from performing an act because it would cause extreme and unreasonable difficulty or hardship.

In-Kind- In the same way. In the context of a structure repair or replacement, it means that the nature, location, and footprint will remain the same as before said repair or replacement.

Inactive- Not in use or operation, especially in regards to being Maintained.

Individual- Pertaining to a single location or instance.

Jurisdictional Area- One or more of the Areas Subject to Protection under the Bylaw/ Resource Areas under the Bylaw.

Lake Chaggagoggmanchauggagoggchaubunagungamaugg- Synonymous with Webster Lake

Maintain/Maintained- To keep functional and in good repair or otherwise keep in a static state and not a Natural State. In the case of lawns, landscaped areas, fields, gardens, orchards, pastures, and paddocks, it means to continually cut herbaceous vegetation so that new woody vegetation is suppressed. When an area as just described has not been Maintained and therefore Inactive for a 5yr. or greater period*, it is no longer considered Maintained and loses any Conditional Exemptions/Exceptions it may have enjoyed in the past. If, in the opinion of the Commission an area has reverted to a Natural State prior to the 5yr. period, said area loses its Maintain/Maintained status.

*The "5yr. or greater period" is a reference to Agriculture as found in 310 CMR 10.04 and meant to be a corollary, but in this case is not limited to Agriculture/Land in Production.

Mean Annual High Water (MAHW)-

- a) Within the context of a river, MAHW is synonymous with Bankfull Condition and the definition of MAHW shall be commensurate with that found in 310 CMR 10.58(2);
- b) Within the context of Great Ponds, lakes, ponds, and vernal pools, the MAHW shall be commensurate with the term Bankfull Condition and shall be the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and may not necessarily be located at a defined break in slope.

Minimal- In the opinion of the Commission, Minimal means Impact that is so small as to be non-significant to the Functions and Values of Resource Areas as they relate to the Public Interests.

Mitigate/Mitigation- Shall be commensurate with 310 CMR 10.04. Further, to lessen the impact of an Activity, Alteration, or Project so the effects on Resource Areas are no longer considered an Adverse Impact.

Most Years- Normally within the context of Vernal Pools, most years shall mean three (3) out of five (5) years, which means that the Commission shall have the right to require investigation of the presence or absence of a vernal pool for up to 5 years.

Native- synonymous with Indigenous, means plant species that originate naturally in Massachusetts and exclude horticultural species. Cultivars of native species may be used at the Commission's discretion.

Natural State- An unmaintained condition in which an area is untouched by human intervention or no longer meets the definition of Maintain/Maintained.

Necessary- Required: indispensable to achieve a specific result.

Perennial River/Stream- Shall be consistent with the definition of River, including the ability to overcome the presumption of perennality, as found in 310 CMR 10.58(2) except that it need not empty into any ocean, lake, pond, or other river and that the ability to overcome the presumption of perennality shall not be applied to Browns Brook, Freemans Brook, Mill Brook, Mine Brook, and Sucker Brook.

Permit- Synonymous with Order as found in 310 CMR 10.04.

Perpetuity- Forever, without end.

Pre-Existing- Means in place prior to the enactment of Article 13.

Project- An activity with a functional purpose (e.g. construction of a single-family house, expansion of a commercial development, dealing with an Emergency to public health and safety).

Public- Relating or belonging to an entire community; in this case, the Town of Webster.

Public Interests- The general welfare that warrants recognition, protection, and something in which the public as a whole has a stake.

Qualified Professional- A Person having earned a college degree(s) in an area of study directly related to wetlands science and/or engineering (e.g. Professional Wetland Scientist /Professional Engineer) and having a minimum of 3 years' demonstrable field experience of actual hands-on expertise in delineating, assessing, analyzing wetlands and their hydrologic, soil(s), biological, zoological and botanical characteristics, functions and values, and having a current working knowledge of all facets of the MGL c. 131, §40 and 310 CMR 10.00, DEP Wetlands Program Policies, and this Bylaw. The Commission may otherwise accept and act upon creditable information presented by a Person(s) other than a Qualified Professional, as defined herein, at its discretion.

Random- An Activity, Alteration, or Work for which an applicant does not specify in the application the entire Project proposed or contemplated by the Applicant or in which the purpose of the Activity, Alteration, or Work cannot be determined. For example, a driveway with no dwelling proposed shall be considered a random alteration. This term is associated with the Random, Unnecessary, & Undesirable performance standard for Avoid, Minimize, and Mitigate requirements of this Bylaw.

Recreation- In activity that a person takes part in for pleasure or relaxation. It may include active recreation, such as boating, or passive recreation such as bird watching.

Restore/Restoration- To return to a previous condition, normally, a better condition.

Scope/Scope of Work- An accurate, detailed, and concise description of the Work to be performed as part of any Activity, Alteration, or Project. The Scope of Work includes the entire Project, and not merely a segment of such (e.g. the entire subdivision, including proposed house, well, and septic system placement and not just road infrastructure).

Setback- A minimum distance that an Activity, Structure, or Work may occur from a wetland resource area described in §2.1 through 2.5 above.

Significant- Plays a role. Within the context of Resource Areas under MGL c. 131, §40 and 310 CMR 10.00 or Resource Areas under the Bylaw, they are significant if they play a role in the protection, as appropriate, of one or more Public Interests. Within the context of determining Impact or Adverse Impact, significant means more than Minimal.

Spring- March 20 to June 20 of any given year.

Statement of Impact Avoidance and Minimization- A portion of the narrative required in §XX which requires that an applicant satisfactorily demonstrate to the Commission that all probable Impacts to Resource Areas have been avoided to the maximum extent practicable, and where Impacts could not be avoided, that the Impacts to Resource Area(s) Functions and Values have been reduced to the maximum extent practicable so as not to result in Adverse Impact.

Stream/Intermittent Stream- The definition of stream shall be consistent with that found in 310 CMR 10.04 except a stream need not flow within, into or out of a Resource Area. It may stand alone without the accompaniment of a Resource Area (e.g. streams may occur upgradient of Wetlands or may exist without any wetland present whatsoever). Further, streams and intermittent streams may be supplied by either surface water runoff or groundwater, as opposed to ASSF's, which convey only surface water runoff. Intermittent streams dry at least once per year. If a Stream/Intermittent stream flows into a Drainage Ditch/Swale, that portion of the channel below the confluence shall be considered a Stream/Intermittent Stream.

Structure- shall mean any manmade component whether above, on, or below ground. It may include, but not be limited to, any new surface or sub-surface component such as buildings, foundations, sheds, decks, garages, fences, barns, tennis courts, underground tanks and irrigation systems, swimming pools, and driveways, due to its potential to alter wetland resource area values.

Structural lot coverage- means that part of a lot or parcel that is covered by roofed structures of at least 200 square feet in size. Structural lot coverage is calculated in square feet and is either equal to the total square footage occupied by one or more foundations, or, in the case of cantilevered structures, the total square footage occupied by the structure and calculated as if a foundation supported the cantilevered portions of the structure. Structural foundations shall be broadly interpreted to include sono-tubes, pilings, concrete blocks, columns, or other types of foundation material which provide structural support to a structure which is covered by a roof.

Summer- June 21 to September 23 of any given year.

Threshold- Those established in 310 CMR 10.54(4)(a)4., 10.57(4)(a)3. and 10.58(4)(d)1.c. which establish quantitative numbers, below which alterations to Resource Areas are not deemed to impair capacity to provide important wildlife habitat functions.

Unavoidable- Impracticable to avoid.

Undesirable/Undesirable Alteration- Any Work, Activity, Alteration, or Project that poses an individual Adverse or Cumulative Impact. This term is associated with the Random, Unnecessary, & Undesirable performance standard for Avoid, Minimize, and Mitigate requirements of this Bylaw.

Unnecessary- Not needed. In the context of this Bylaw, the term unnecessary is related to a project's ability to avoid and/or minimize impacts while also achieving the primary project purpose. For example, a single-family house requires a dwelling, well, septic system, and driveway. Unnecessary structures include, but are not limited to a garage, deck, gazebo, etc. This term is associated with the Random, Unnecessary, & Undesirable performance standard for Avoid, Minimize, and Mitigate requirements of this Bylaw.

Unreasonable- Not guided by reason; irrational or capricious.

Value- The importance or worth of one or more of a Resource Area or Habitat's Functions to the Public.

Vernal Pool- A confined basin, which need not be located within another Resource Area, and which, at least in Most Years, holds water for a minimum of two continuous months during the spring and/or summer, are free of adult fish populations, and are further identified by the species of fauna that utilize them. The method for determining the fauna necessary to classify a vernal pool shall be that used by the Massachusetts Division of Fisheries & Wildlife, as amended from time to time. The outermost boundary of the Vernal Pool is the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water, or by using procedures outlined in 310 CMR 10.57(2)(b)(3) for Isolated Land Subject to Flooding. A vernal pool may have a permanent inlet, but may not have a permanent outlet. The Resource Area of Bank does not apply to Vernal Pool under this definition. The Vernal Pool need not be certified by the Massachusetts Division of Fisheries & Wildlife to be classified as such and receive protection under this Bylaw. The Vernal Pool AURA shall extend into the upland buffer zone of applicable resource areas. The outer boundary of the Vernal Pool may be referred to as the Mean Annual High Water (MAHW) line, and shall be the inner boundary of the Vernal Pool AURA.

View Corridor- An area allowed to an applicant that facilitates unimpeded visual line-of-sight with a waterbody.

Waterbodies less than 1/4 acre-foot in size- An isolated area, which need not be located within another Resource Area, that provides temporary storage for water and where runoff and high groundwater pond and slowly evaporate or infiltrate into the ground. They are not Vernal Pools in that the requisite aquatic life components are not found and are mainly, but not necessarily limited to flood control functions.

Wetland- As defined in 310 CMR 10.55(2), except that they shall not be limited to those that border on creeks, rivers, ponds, and lakes, but may be isolated in nature.

Work- Pertains to duties to be performed in association with Activities, Alterations, and/or Projects.

5. Application for Permits

5.1 Application for

Written application shall be filed with the Commission to perform activities subject to this Bylaw. All Applications shall contain a written project description/work narrative. NOIs will also include a Statement of Impact Avoidance and Minimization in sufficient detail that describes the entire Scope of any/all proposed Work, Activity Alteration, or Project(s) associated with the Application, and how it complies with this Bylaw;

Who May Submit: The applicant must be the owner or owners of the property or easement that is the subject of the application, or it must be the government agency or entity with power of condemnation over such property or easement. In the case where it is not real property or an easement, an association or other entity with legal authority to do so may submit such application (e.g. Webster Lake Association, Nipmuc Ski Club, and any like organization that may be formed).

In order to prevent Random or Undesirable Alterations, The Scope of Work for any Project must include the entire Project, and not merely a segment of such (e.g. the entire subdivision, including proposed house, well, and septic system placement and not just road infrastructure). The Applicant may present the Project's additional Scope of Work in conceptual form.

5.2 Request for Determination of Applicability.

The Commission shall accept a Request for Determination of Applicability (RDA) form under the Wetlands Protection Act (M.G.L. Ch. 131 §40) as similar request under this Bylaw. The Application shall contain such plans and analysis deemed necessary by the Commission, and as specified in this Bylaw and its Regulations, which describe the proposed Work, Activities, Alteration(s) or Projects and their effect on Resource Area(s). The Commission shall issue its determination in writing within 21 days of the close of the public hearing thereon unless the applicant authorizes an extension in writing. If the Commission determines that a proposed activity is subject to this Bylaw and issues a positive Determination, the applicant may file for approval under §5.4. An RDA may only be used to verify wetland resource boundaries for delineations of less than 600 linear feet.

5.3 Abbreviated Notice of Resource Area Delineation (ANRAD)

This application shall include such information and plans to describe the proposed project and define the wetland resource areas. The Commission shall accept an Abbreviated Notice of Resource Area Delineation (ANRAD) application form under the Wetlands Protection Act (M.G.L. Ch. 131 §40) as a similar request under this Bylaw. Alternatively, the Commission may accept a Request for Determination of Applicability to determine partial resource area boundaries. The suitability of this approach will be determined by the Commission. An ANRAD shall be required before a Notice of Intent where the length of line equals or exceeds 600 linear feet *prior* to subdivision of land, as applicable.

5.4 Notice of Intent (NOI)

This application shall include such information and plans to describe the proposed project and define the wetland resource areas. The Commission shall accept a NOI application form under the Wetlands Protection Act (M.G.L. Ch. 131 §40) as similar request under this Bylaw. An ANRAD shall be required before a Notice of Intent where the length of line equals or exceeds 600 linear feet *prior* to subdivision of land, as applicable.

5.5 Independent Consultants.

The Commission may, at the expense of the applicant, retain an independent consultant for the purpose of providing the Commission with data, analysis, or other information deemed by the Commission to be reasonably necessary or appropriate to assist the Commission in reviewing the application or rendering its decision, in conformity with the provisions of M.G.L. Ch. 44 §53G and Rules and Regulations of the Commission.

5.6 Administrative Approvals.

Activities considered minor in scope and that would predictably have no Significant or Cumulative impact upon the resource areas protected by this Bylaw, may be reviewed and permitted by the Conservation Agent via the Request for Determination of Applicability process.

6. Fees

6.1 Fee schedule

At the time of an application, the applicant shall pay a filing fee, called the Bylaw Filing Fee, specified in regulations of the Commission. The Bylaw Filing Fee is in addition to that required by the Wetlands Protection Act and 310 CMR 10.00. Filing fees are non-refundable. Town, County, State, and Federal projects are exempt from the Bylaw Filing Fee. The Commission may waive or decrease the filing fee for non-exempt persons, parties, or entities at its discretion. Filing with the Commission does not relieve any person, party, or entity, from filing for permits also required at the local, state, or federal level;

The Conservation Commission shall use such fees to implement this bylaw, the regulations promulgated hereunder, and any policies developed by the Conservation Commission including, but not limited to, the employment of a Conservation Consultant/Agent. The responsibilities of the Conservation Consultant/Agent may include, but are not limited to: review of resource areas, performing site visits, briefing the Conservation Commission, serving as liaison between the Conservation Commission, applicants, abutters, consultants and other interested parties, drafting Determinations of Applicability, Orders of Resource Area Delineation, and Orders of Conditions, verifying implementation of erosion control measures, facilitating and attending Public Hearings, reviewing requests for certificates of compliance and enforcing the provisions of this article, the regulations promulgated hereunder, and the policies developed by the Conservation Commission

6.2 Outside Consultants

The use of outside consultants may be found necessary in order to enforce the provisions of this Bylaw, regulations promulgated hereunder, and the policies developed by the Conservation Commission, and any other law pertaining thereto, at any point during the review of an application until a Certificate of Compliance is issued. Outside consultants must be qualified by the Commission (i.e. the Qualified Professional). Pursuant to MGL Ch. 44 §53G and regulations promulgated by the Commission, reasonable fees may be imposed upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects.

- a. Outside Consultant Fee - The Commission shall exercise its discretion to utilize MGL Ch. 44 §53G, and to require the payment of a consultant fee, based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of informed decisions backed by science and good architectural and engineering practices. MGL Ch. 44 §53G funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose.

In such instances where consulting fees are required, the Commission shall notify the applicant of this need and shall provide the opportunity for the application to be amended or withdrawn. Should an applicant choose to proceed, the Commission shall require the applicant to pay the fees for these consulting services.

All fees that are shared with the Commonwealth of Massachusetts, when paid, shall be placed and held in a dedicated fund, so constituted, pursuant to GL c.43 §218 of the Acts of 1997 (Amending GL c.131 §40). Fees required solely under this Bylaw shall be deposited in a 'revolving fund' pursuant to GL c.44 §53 1/2. These fees shall include all Application fees, related and any prorated fees, or fees of any kind. Payment of the consultant fee shall be placed in a Section 53G account, and shall be made at the time of application.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested fees above within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and DEP of such a decision in writing.

Outside consultants shall be chosen by the Commission. The applicant may appeal the selection of an outside consultant, or size of the consultant fee, or any act related thereto, to the Board of Selectmen in accordance with the provisions of the MGL c. 44 § 53G, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of Massachusetts certification or license, or an educational degree or three or more years of practice in the field at issue, or a related field, or references mutually acceptable to the Commission. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

- b. Procedures for the hiring and payment of outside consultants (i.e. Qualified Professional) shall be in accordance with MGL c.44, §53G and Rules and Regulations promulgated by the Commission. Any unused portions of collected fee(s) shall be returned to the applicant following issuance of a finding (e.g. Determination of Applicability) unless the Commission, at a public hearing, decides that additional services and information will be required (e.g pre-application meeting, construction monitoring), until a final Certificate of Compliance is issued.
- c. Specific Consultant services may include, but are not limited to interpretation of Work, Activity, Alteration, or a Project's compliance with MGL c.131, §40, 310 CMR 10.00, this Bylaw, Resource Area(s) survey and delineation and delineation review, analyses of Resource Area(s) Functions and Values, including but not necessarily limited to wildlife, plant and aquatic habitat evaluations, invasive species and eradication plans and plan review, hydrogeologic, soils and drainage analysis, environmental or land use law, and interpretation(s) thereof, as well as stormwater, erosion and sedimentation control review and associated inspections of on-going construction, attending pre-construction meetings, inspections for Certificates of Compliance, presentations at public hearings and meetings to the Commission of findings and opinions in the form of reports, drafting Orders and/or Determinations, memos, photos, videos, GIS and computer services, assistance during appeal or litigation, and coordination of any of the above;

7. Notice and Hearings

7.1 Notice.

Any person filing a Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation, or an amendment to any of the above permits with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across 300 feet of water. The notice shall state a brief description of the project or other proposal and the date and time of any Commission hearing or meeting date and time if known.

To the extent permitted by law, by submitting an Application, an applicant is deemed to consent to entry onto the property that is the subject of the Application, by the Commission, its agents or Consultants, officers, members and employees during reasonable times, without such entry being deemed a trespass, for the purpose of performing their duties under this Bylaw.

7.2 Public Hearing.

The Commission shall conduct a public hearing on any application and a public meeting on the Request for Determination of Applicability, with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in Webster. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the

hearing, which may include the need for additional information or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

- a. In order to provide sufficient review time the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or applicant's agent, less than five (5) business days before the scheduled public hearing or public meeting. This may be reduced at the Commission's discretion.
- b. The Commission may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

8. Permits and Conditions

All Application(s) shall be filed concurrently with (or after) any other application(s) for variances and approvals required by any other Town Board or Commission or under their Regulations, or after any such permit(s) have been issued, unless the Commission so decides to waive this requirement. The Commission shall have the conditional prerogative of withholding its final decision until all relevant or related permits are issued. Should an applicant have already filed and received a permit from another Town Board or Commission under their Regulations, the Commission shall not be held to conformance with those permits already received.

If the Commission, after a public hearing, determines that the Work, Activities, Alterations, and/or Project which are the subject of the application are likely to have an Individual or Cumulative Impact, Adverse or no, upon the Functions and Values of Resource Areas as they relate to the Public Interests, the Commission shall within twenty one (21) days of the close of the hearing issue or deny a Permit for the Work, Activities, Alterations, and/or Project requested. The Commission shall impose conditions which it deems necessary or desirable for the protection of the Public Interests, and all Work, Activities, Alterations, and/or Projects shall be performed in accordance with those conditions. A Permit may identify requirements that shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all current and future owners of the land.

When making a determination to issue a Permit or denial, the Commission shall take into consideration the extent to which the applicant has avoided, minimized, and mitigated Individual or Cumulative Adverse Impacts for any such Work, Activity, Alteration, or Project. The Commission shall also take into account the individual or Cumulative Impacts to Resource Areas throughout the municipality as they relate to the application under consideration, resulting from past activities, permitted and exempt, and foreseeable future activities.

8.1 RDA Conditions.

The Commission shall have the authority to impose conditions upon Determinations of Applicability if work is proposed within a Resource Area.

8.2 Conditions.

Upon the issuance of a permit, the Commission shall impose conditions it deems necessary or desirable to protect the Public Interests associated with wetland resource area Functions and Values, and all Activities shall be conducted in accordance with those conditions.

- a. Mitigation - Mitigation for Unavoidable Impacts to Resource Areas must take place within jurisdictional areas on the subject property or in as close proximity to the proposed Alterations as possible. Mitigation proposed outside of jurisdictional areas will not be entertained. The success rate for wetland replication areas shall be 1:1 for replicated wetland to filled wetland commensurate to 310 CMR 10.00. In order to assure at least a 1:1 ratio success rate, wetland replication areas shall be constructed at a ratio of 2:1 of replicated wetland to filled wetland. A full growing season for wetland replication area construction shall be no less than five (5)

months. Commission may, at its discretion, accept mitigation other than replication when wetlands are proposed for fill that are jurisdictional under the Bylaw only.

- b. Stormwater Standards - The provisions of the DEP Stormwater Management Standards shall apply to those projects described at 310 CMR 10.05(6)(l). At its discretion, the Commission shall have the authority to require studies, to its satisfaction, for projects described at 310 CMR 10.05(6)(l), even if they do not discharge to a Critical Area as defined in 310 CMR 10.04. Examples of required studies would include the 100 year analysis for stormwater runoff associated with a single family house or small (4 or fewer lots) subdivision. DEP Stormwater Management Standard 6 shall apply to all Critical Areas. The Commission shall require for engineering analysis for any duration storm, rainfall amounts commensurate with those at the project site under the National Oceanographic and Atmospheric Administration (NOAA) National Weather Service Hydrometeorological Design Studies Center, Precipitation Frequency Data Server (PFDS).
- c. Additional Studies - The Commission shall have the authority to require studies beyond those mentioned above for any Work, Activity, Alteration, or Project within a Resource Area, regardless of size, scope, or Threshold found in 310 CMR 10.00 and as defined in this Bylaw, to be conducted by a Qualified Professional. The decision shall be based upon the Commission's estimation of the importance of the Resource Area under consideration in relation to the Public Interests. Examples may include, but not necessarily be limited to, Appendix A or B wildlife habitat evaluations (at the Commission's discretion), hydraulic/hydrologic studies of rivers and streams, and floodplain studies.
- d. Docks – Docks on Webster Lake must be registered under Massachusetts General Law Chapter 91, since Webster Lake is a Great Pond. Any application to the Commission in which there is an unregistered dock, said dock shall be defacto pulled into the application in order to become compliant with Chapter 91. Pre-1984 docks must be less than 600 square feet in size. Post-1984 structures, whether existing or new, must be less than 600 square feet and water-dependent with no fill involved. Applicants must provide documentation, photographs, or the like to prove that the dock was constructed post-1984. Docks must be set back 25 feet from the property line, where feasible, and never impede on navigation. Maximum dock length shall be 35 feet from the mean high water line. The endcaps of the dock shall have permanent reflective markers facing outward and to the sides. There may not be more than one (1) dock per parcel.

8.3 Denial.

Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. The Commission may also deny a permit:

- a. for failure to submit necessary information and plans requested by the Commission;
- b. for failure to comply with the procedures, design specifications, performance standards, and other requirements in Regulations of the Commission; or
- c. for failure to avoid, minimize or mitigate unacceptable Significant, Adverse, or Cumulative effects upon the resource area values protected by this Bylaw.
- d. In most instances, the Commission shall consider disturbance closer than 25' to a resource area, excluding Bordering Land Subject to Flooding as Adverse.

8.4 Waivers/Variations.

The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its Regulations, provided that:

- a. the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said Regulations;
- b. avoidance, minimization and mitigation have been employed to the maximum extent feasible; and either
- c. the project, considered in its entirety, would result in a net benefit of resource area values; or

- d. the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

8.5 Expiration of Permit.

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance, or shall expire up to five years where special circumstances warrant and where those special circumstances are set forth in the Order. Extensions for permits shall be limited to one (1) period of up to three (3) years, at the Commission's discretion, upon **written** request from the applicant made at least 30 days prior to the expiration of the permit.

Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

8.6 Revocation of Permit.

For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this Bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §X, and after a public hearing.

8.7 Amendment of Permit.

Amendments to any permit shall be handled in the manner set out in the Wetlands Protection Act Regulations (310 CMR 10.00) and policies thereunder. For good cause, the Commission may also modify its determination of any resource area boundary delineation established in an ORAD at the time of issuance of any Order of Conditions for any activity or project on the same site; the issuance of an ORAD shall not be considered final action on such a boundary delineation request.

8.8 Recordation of Permit.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Worcester Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the Worcester Registry of Deeds, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

8.9 Forms.

Unless and until the Commission creates individual forms, the Permit, Certificate of Compliance, Notice of Violation, or Enforcement Order issued under this Bylaw may use the DEP Wetlands and Waterways Program forms for such.

8.10 Security.

As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- a. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- b. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

9. Regulations

After public notice at least 14 days prior to public hearing, the Conservation Commission may promulgate such Rules and Regulations to effectuate the purpose of this Bylaw, effective when voted and approved by a majority vote of Town Meeting, and filed with Town Clerk. Failure by the Commission to promulgate such Rules and Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

10. Compliance

10.1 Scope.

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this Bylaw.

10.2 Entry.

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

10.3 Enforcement.

The Commission shall have authority to enforce this Bylaw, its regulations and Permits issued thereunder by violation notices, administrative orders (i.e. cease & desist order), Enforcement Orders, non-criminal citations pursuant to Subsection c. below, and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations.

Upon request of the Commission, the Board of Selectmen and the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law. All enforcement actions will generally follow the procedures established in the current Wetland Enforcement Manual published by MA DEP.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

- a. Fines - Any person who violates any provision of this Bylaw, regulation thereunder, or permits or administrative orders issued thereunder, may be punished by a fine of not more than \$300, beginning, at the Commission's discretion, on the Day of Discovery. Each day or portion thereof during which a violation continues, or unauthorized fill remains in place, shall constitute a separate offense, and each provision of the Bylaw, regulations, permit or order violated shall constitute a separate offense. Fines may end when a written plan to Restore the affected area has been presented or accepted by the Commission, or an application for Permit received.

As long as any person in violation demonstrates a reasonable, good faith effort to comply with this Bylaw, the Commission shall refrain from issuing fines. However, the Commission shall resort to issuing fines when the violator ceases to demonstrate a reasonable, good faith effort toward achieving compliance. This provision does not preclude the Commission from issuing fines and the Commission from simultaneously ordering mitigation or restoration of the affected resource area(s). The Commission has the authority to retract and reduce fines if circumstances warrant.

- b. Enforcement Orders - When possible violations are reported, a Commissioner or the Conservation Consultant/Agent will determine whether a violation exists and if an Enforcement Order is necessary. The Commission Consultant/Agent may consult with the Commission

Chairman and other members as necessary, but if time or other constraints exist, may proceed employing best judgment. Any Enforcement Order issued by any individual must be ratified by the Commission at a public meeting.

- i. If a Commissioner or the Conservation Consultant/Agent confirms or strongly suspects a violation, an Enforcement Order will be issued. Enforcement Orders may direct the property owners and contractors to (1) stop work, (2) identify resource areas on the site, (3) install erosion controls, and (4) meet with the Commission to discuss the violation.
 - ii. If a wetland line has been previously approved by the Commission, its location will be the basis for evaluation of the violation. If a wetland line has not been established or approved by the Commission, then the Commission or Enforcement Order may require the owner, developer, and contractor to employ a wetland scientist to identify wetland resource areas with flagging within a time frame not longer than two weeks from the date of the Enforcement Order. All Enforcement Orders will be maintained in the Conservation database and placed on file. At the subsequent meeting, the Commission will consider the following aspects of the violation: value of the area to the statutory interests, harm of the damage, immediacy of the harm, value of restoration, feasibility of restoration, potential legal outcomes, and potential financial burden to the Town of Webster.
 - iii. The Commission shall withdraw enforcement orders if it finds that they were issued without proper cause.
- c. Appeals - In addition to the appeal provisions under M.G.L. Chapter 40, §21D, persons fined may appeal in writing to the Commission within 21 days. The Commission shall vacate fines where compliance has been established or, their issuance is inconsistent with the interests of this Bylaw. The Commission may suspend fines as long as the person in violation demonstrates a reasonable, good faith effort toward obtaining compliance. The Commission may restore suspended fines at any time during an existing violation. This provision does not preclude the issuance of fines in conjunction with orders for restoration or mitigation.
- d. Non-criminal disposition- In addition to the procedures for enforcement as described above, the provisions of this Bylaw may also be enforced by non-criminal complaint pursuant to the provisions of MGL c. 40, § 21D and **Chapter 85 of the Webster Town Charter**. The enforcement agent shall be the conservation agent or designee (e.g. Conservation Commissioner or consultant to the Commission) or police officer. The penalty for violation of any provision of this Bylaw shall be \$300 for the Day of Discovery, and each day the violation continues pursuant to subsection F above.
- e. Cease & Desist - When Work or Activities in non-compliance with this Bylaw are present, a member of the Commission or the enforcement agent may issue a verbal and/or written cease-and-desist, which the party subject to enforcement shall immediately comply. Any contractor or company working for a landowner within a jurisdictional area in which an enforcement action is being taken, shall, at the discretion of the Commission, be held equally liable with the landowner.
- f. Transfer of Ownership - Any Person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Permit issued pursuant to this Bylaw shall comply with any such order or Restore such land to its condition prior to any such violation. No action, civil or criminal, shall be brought against such Person provided that that such Person is in Compliance with the Order issued by the Conservation Commission.

11. Adjacent Upland Resource Area (AURA) Provisions

11.1 Setbacks. (for areas outside of Section 12 Webster Lake Protection District)

Table 1 describes minimum distances (setbacks) Work, Activities, of Structures activity from the edge of wetlands or vernal pools. In administering these provisions, all work shall meet the performance standards for all other resource areas on-site (e.g. Riverfront Area), and shall not be construed to lessen protection under M.G.L. c. 131, Section 40.

No activity shall be allowed within these setbacks except as provided below. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission. The setbacks shall be as follows:

- a. 0-foot setback for wetland-dependent structures (drain outfalls, weirs, docks, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
- b. 75-foot no build setback from the edge of the resource to the edge of driveways, roadways and Structures for Commercial/Industrial development. Of the 75 ft., the 50 ft. closest to the edge of the resource will be undisturbed natural vegetation.
- c. 50-foot chemical-free area within which no pesticides, herbicides, or fertilizers shall be used, except as allowed by 310 CMR 10.00.
- d. 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.
- e. 100-foot setback from the mean high water line of vernal pools.
- f. Residential – Table 1 below describes setbacks for new development and additions. No disturb means leaving the vegetation natural. If an area is previously disturbed the area will be allowed to naturally revegetate

Table 1. Residential Setbacks (outside §12 WLPD)

| Lot Size (square feet) | No disturb (feet) | No build (feet) | Total setback (feet) |
|------------------------|-------------------|-----------------|----------------------|
| <10,000 | 10 | 15 | 25 |
| 10,001 – 20,000 | 15 | 15 | 30 |
| 20,001 – 30,000 | 20 | 15 | 35 |
| 30,001 – 40,000 | 25 | 15 | 40 |
| 40,001 – 50,000 | 30 | 15 | 45 |
| 50,001 – 60,000 | 35 | 15 | 50 |
| 60,001 – 70,000 | 40 | 15 | 55 |
| 70,001 – 80,000 | 45 | 15 | 60 |
| 80,001 – 100,000 | 50 | 20 | 70 |
| >100,000 | 50 | 25 | 75 |

In areas where the property owner owns adjoining lots, these lots shall be considered as one lot for the purposes of applying the values contained in Table 1 above for subdivisions of land.

Where the setback requirements noted above cannot be met, the applicant may request a variance in accordance with the burdens of proof in Section 8.4 above. Variances shall not exceed 50% of the required setback width.

Pre-existing activities or structures not meeting the setbacks set forth above need not be discontinued or removed [but shall be deemed to be nonconforming]. No new Work or Activity may commence and no new structure shall be located closer to the edge of wetlands or vernal pools than existing non-conforming like activities or structures. New Work, Activities, or Structures may occur as close to the edge of wetlands or vernal pools if, in the opinion of the Commission, such Work, Activity, or Structure will not Adversely Impact the Public Interests no more adversely than the existing activity or structure.

11.2 200 ft. AURA Great Ponds Exemptions

The 200 ft. AURA shall not apply to lots that are not contiguous to Webster Lake and where the lot perimeter at its closest point is more than 100 feet from the shore.

11.3 Vegetation Replacement (Also applies to WLPD)

Where a tree or trees are being removed and the Commission requires replacement, trees shall be replaced at a ratio of 2 new trees for every tree taken down. The minimum caliper shall be 1.5”.

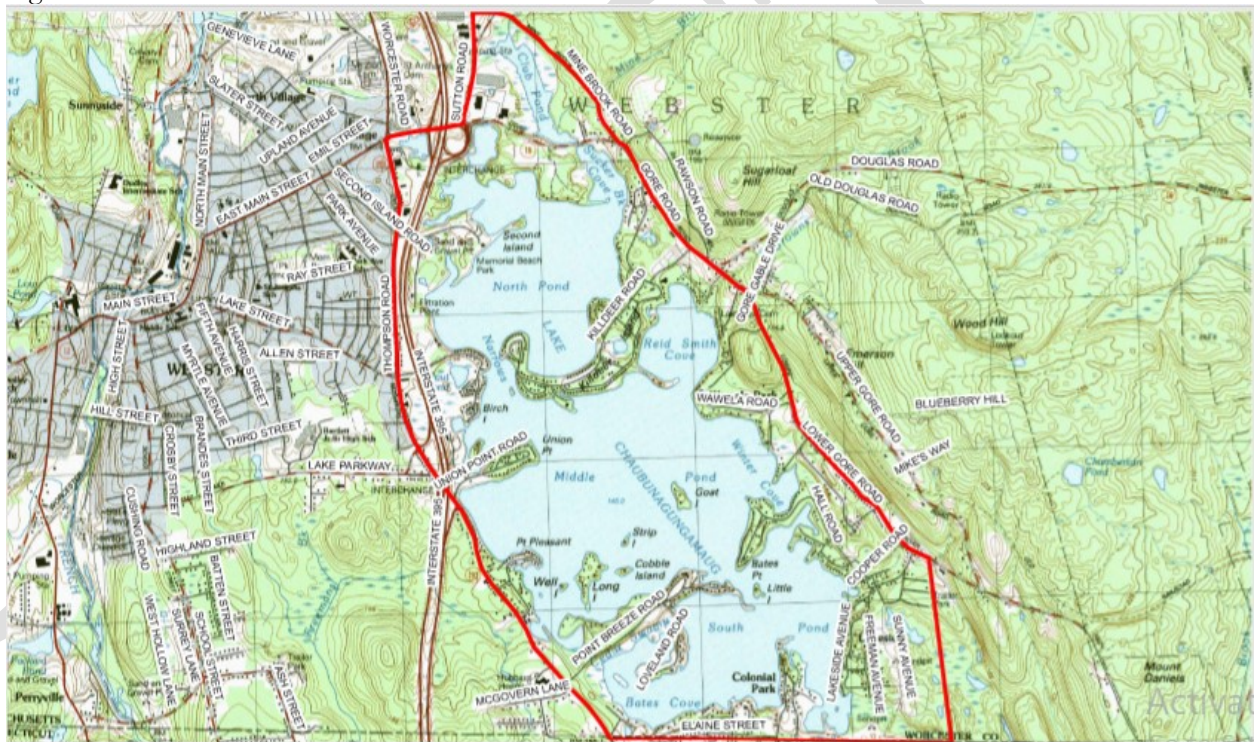
Replacement trees and other vegetation shall be Native Species. Exceptions may be made at the Commission's discretion.

12. Webster Lake Protection District (WLPD or District) Special Provisions

The extent of the District is outlined in Figure 1, as amended from time to time. In administering these provisions, all work shall meet the performance standards for all other resource areas on-site (e.g. Riverfront Area), and shall not be construed to lessen protection under M.G.L. c. 131, Section 40.

The boundaries of the WLPD is as follows: starting from the Connecticut State line on the west, Thompson Rd. (Rte 193) to East Main St. (Rt. 16), East Main St. (Rt. 16) to Sutton Rd., Sutton Rd. to Cudworth Rd., Cudworth Rd. to Mine Brook Rd., Mine Brook Rd. to Gore Rd. (Rt. 16), Gore Rd. (Rt. 16) to Lower Gore Rd., Lower Gore Rd. to the western boundary of lots 44_A_3_0, 41_A_5_0, 41_A_4_0, & 41_A_3_0. The southern boundary is the Connecticut State Line.

Figure 1.



12.1 Purpose.

The purpose of the Lake Protection District is to protect, preserve and maintain the Public Interests described in this Bylaw, including but not limited to existing and potential ground and surface water resources of the Town of Webster and the watershed of Webster Lake. Understanding that the area in and around Webster Lake has special meaning in land use, water supply, as a recreational resource, it's aesthetics, and habitat, recognizing that many areas within the District have areas of high population density with high development pressures, and where a "one size fits all" rubric does not necessarily support the Public Interests. Further, the Commission recognizes that shoreline recreation is one of the predominant attractions for living on, or visiting Webster Lake. To this effect, this Bylaw is designed to balance the mandate to protect the Public Interests and a property owner's rights to develop and use the property. As such, the attached rubric is designed to provide flexible setbacks in this important part of Town.

12.2 Bordering Vegetated Protection Zone

A primary part of the mechanics of protection of the Public Interests as they relate to wetlands is to avoid and minimize impacts to the extent practicable. Naturally vegetated areas, herein referred to as the Bordering Vegetated Protection Zone (BVPZ) with the AURA under this Bylaw protect the adjacent resource areas by filtering and removing pollutants, by providing groundwater recharge, by maintaining surface and groundwater flows, by moderating water temperatures, by providing essential habitat for wetland wildlife and plant species, by providing shading and screening, by preventing and reducing erosion and siltation into wetlands, by providing flood storage capacity and associated prevention of pollution, and by protecting water quality. Activities undertaken in the AURA have a high likelihood of adverse impact to the adjacent resource area.

The Commission shall require a BVPZ in accordance with the requirements for new residential, commercial, and industrial development. Vegetation within a BVPZ must be either retained in a natural, undisturbed condition, or properly managed in accordance with the standards contained in this section. In cases where native flora (vegetation) does not exist within a BVPZ, the Commission may require restoration efforts, when thresholds are triggered, which include, but are not limited to replanting the BVPZ with indigenous plant species.

The BVPZ shall remain covered with indigenous flora and in an undisturbed state in order to promote the Public Interests. However, the Commission may permit minor alterations to the BVPZ that facilitate the continued enjoyment of the Town's wetland resources. All alterations to wetland resources under this Bylaw or alterations to natural vegetation (i.e. areas not presently maintained in a landscaped condition) within the Commission's jurisdiction shall be conducted in accordance with the standards contained in this section as well as all other applicable regulations, policies and procedures of the Commission. In order to ensure compliance with these requirements, the Commission may require applicants to submit a BVPZ management plan.

In areas where the property owner owns adjoining lots, these lots shall be considered as one lot for the purposes of applying the values contained in Table 2 below for subdivisions of land.

Table 2. BVPZ designations for residential, commercial, and industrial development

| Lot Size (square feet) | Require BVPZ width (feet) | Building setback (§12.4) | Total setback (feet) |
|------------------------|---------------------------|--------------------------|----------------------|
| <10,000 | 5 | 20 | 25 |
| 10,001 – 20,000 | 10 | 20 | 30 |
| 20,001 – 30,000 | 15 | 20 | 35 |
| 30,001 – 40,000 | 20 | 20 | 40 |
| 40,001 – 50,000 | 25 | 20 | 45 |
| 50,001 – 60,000 | 30 | 20 | 50 |
| 60,001 – 70,000 | 35 | 20 | 55 |
| 70,001 – 80,000 | 40 | 20 | 60 |
| 80,001 – 100,000 | 45 | 20 | 65 |
| >100,000 | 50 | 20 | 70 |

The BVPZ shall be measured from the outermost edge of the outermost wetland resource area, excluding Land Subject to Flooding. In the case of man-made shorelines (i.e. retaining walls), the BVPZ shall be measured from the inland-most edge of said shoreline. In instances when the wetland resource feature accounts for 50 percent or more of the lot, excluding Land Subject to Flooding, the Commission may grant a variance to the required BVPZ width.

The BVPZ for new development is contained in Table 2 and are based upon the square footage of the lot, as determined by the tax assessor.

BVPZ requirements for alterations to existing structures: all calculations for the width of the BVPZ shall be made on the basis of Structural Lot Coverage.

- a. Where alterations to an existing structure or structures result in the expansion of the structural lot coverage such that the square footage of the foundation increases by less than 25 percent, no new BVPZ shall be required.
- b. Where alterations to an existing structure or structures result in the expansion of the structural lot coverage such that the square footage of the foundation increases by 25 percent or more as of the date of the promulgation of this Bylaw, the BVPZ requirement shall be established with a width established by Table 2.
- c. A BVPZ shall not be required when a structure is demolished and rebuilt on the existing footprint. Where a structure is demolished and rebuilt and will result in an expansion of the structural lot coverage such that the square footage of the foundation increases by 25 percent or more, a BVPZ shall be established in accordance with the widths specified in Table 2.
- d. Where the applicant demolishes a structure, any contemporary or subsequent application to rebuild on a significantly different footprint shall meet applicable BVPZ requirements.
- e. Structures less than 200 square feet in area are excluded from these requirements.
- f. Where the BVPZ requirements noted above cannot be met, the applicant may request a variance in accordance with the burdens of proof in **Section X** above. Variances shall not exceed 50% of the required BVPZ width.

The BVPZ width for properties wholly or partially within Estimated and/or Priority Habitats, within a Zone II wellhead protection area, Interim Wellhead Protection Area, or adjacent to a Coldwater Fishery shall be twice that specified in Table 2.

The BVPZ width shall be adjusted based on slope gradient within the jurisdictional areas, starting at the inland-most resource area, or in the case of Webster Lake, the mean high water mark, area per Table 3 below:

Table 3. Slope Adjustment Factor for BVPZ Widths

| Slope Gradient | Additional BVPZ Multiplier |
|----------------|----------------------------|
| 5-14% | 1.3 |
| 15-40% | 1.4 |
| >40% | 1.5 |

12.3 Buffer management and maintenance requirements

All alterations within the BVPZ or alterations to natural vegetation (i.e., areas not presently maintained in a landscaped condition) within the Commission's jurisdiction may be required to submit a BVPZ management plan for the Commission's approval that is consistent with the requirements of this section. BVPZ management plans shall include a description of all proposed alterations and methods of avoiding sensitive areas such as the proper placement and maintenance of pathways. In order to promote the Public Interests, the BVPZ shall be vegetated with indigenous flora and retained in a natural, undisturbed condition, or shall be properly managed. Such management activities compatible with this goal include, but are not limited to:

- a. Shoreline access paths: Pathways which provide access to the shoreline are normally considered permissible provided they are less than or equal to six (6) feet wide and follow a path that minimizes erosion and gulying within the buffer zone (e.g., a winding, but direct path). Pathways should avoid, or may be prohibited in sensitive habitat areas. Pathways may be vegetated with grasses and mowed or may be surfaced with pervious pavers or crushed stone.

- b. View corridors: Selective tree removal and pruning and thinning of natural vegetation may be allowed within a defined corridor in order to promote a view of the shoreline, but shall not exceed more than 25% of the length of the parcel's frontage as measured along the shoreline and no more than 25% of the total square footage of the AURA on-site. Only the minimal alteration of vegetation necessary to obtain a view shall be acceptable to the Commission. Shoreline access paths shall be located within view corridors to the maximum extent practicable in order to minimize disturbance of the AURA and BVPZ. View corridors shall be prohibited in Estimated and/or Priority Habitats.
- c. Habitat management: Management of natural vegetation within a buffer zone to enhance wildlife habitat and control nuisance and non-native species of vegetation may be allowed. Homeowner control of non-native and nuisance species such as poison ivy is normally considered acceptable. However, the indiscriminate use of herbicides or the clear-cutting of vegetation shall be prohibited. The use of fertilizers is generally prohibited within the BVPZ except when used to enhance the replanting of native vegetation (e.g., hydroseeding) approved by the Commission. However, the clearing or outright elimination of natural vegetation for such purposes as controlling ticks or pollen shall not be permitted.
- d. Safety and welfare: Selective tree removal, pruning and thinning of natural vegetation within the BVPZ may be allowed by the Commission on a case-by-case basis for proven safety and welfare concerns (e.g., removal of a damaged tree in close proximity to a dwelling). In order to promote child safety and manage pets in areas harboring ticks, fences along the inland edge of a resource area and along shoreline access pathways may be permitted.

12.4 Building Setbacks (WLPD)

A setback is the minimum distance from the inland boundary of a BVPZ at which a Structure may be built. A setback of twenty (20') feet shall be maintained from the inland boundary of a BVPZ. The setback shall apply to Structures, excluding fences.

Notwithstanding the requirements of §12.3 above, no person shall construct a deck or patio closer than 15 feet from a wetland resource area.

13. Burden of Proof

Except where a higher burden of proof is specified in this Bylaw or Regulations adopted by the Commission, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable Significant, Adverse, or Cumulative impacts upon the Public Interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

14. Appeals

A decision of the Commission shall be reviewable in the superior court in an action filed within 60 days thereof, in accordance with M.G.L. Ch. 249 §4 as amended .

15. Relation to the Wetlands Protection Act

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Ch. 131 §40), as amended, and Regulations (310 CMR 10.00), as amended thereunder. It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, rules and regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under MGL c. 131, §40 and 310 CMR 10.00.

16. Severability

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

Provided that this Bylaw shall not be applicable to activity that is the subject of a Notice of Intent filed with the Commission pursuant to the provisions of said Wetlands Protection Act (M.G.L. Ch. 131 §40) before Month Day Year (date that the Bylaw was ratified).

Article XX, Town Meeting, Month Year
Approved by Attorney General Month Day Year

DRAFT